



PUBLIC NOTICE

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Federal Communications Commission
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DA 02-994
Released: April 30, 2002

DOMESTIC SECTION 214 APPLICATION FILED FOR CONSENT TO TRANSFER CONTROL OF MPOWER COMMUNICATIONS CORP.

PLEADING CYCLE ESTABLISHED

WC Docket No. 02-88

On April 12, 2002, Mpower Communications Corp. (Mpower or Applicant), filed an application pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.01 of the Commission's rules, 47 C.F.R. § 63.01, for consent to an indirect transfer of control of Applicant from the existing shareholders of Mpower Holding Corporation ("Mpower Holding") to new shareholders of Mpower Holding, as described herein.¹

The proposed transfer of control will occur as a result of a reorganization of Applicant's parent company, Mpower Holding, which will include the issuance of additional common stock of Mpower Holding to new shareholders, in exchange for certain senior secured notes and non-voting preferred stock issued by Mpower Holding, and will be executed pursuant to an action initiated by Mpower Holding under Chapter 11 of the United States Bankruptcy Code.

Mpower is a privately held Nevada corporation with a principal place of business at 175 Sully's Trail, Suite 300, Pittsford, NY 14534. Applicant is a competitive local exchange carrier providing local, long distance, switched access, other access, DSL, and Internet access services in 27 markets in California, Florida, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas.

Mpower is wholly owned by Mpower Holding, which is a publicly traded Delaware corporation with a principal place of business at 175 Sully's Trail, Suite 300, Pittsford, NY 14534. Mpower Holding does not provide telecommunications services in any jurisdiction and holds no regulatory licenses from any state or federal regulatory agency.

On April 8, 2002, Mpower Holding filed a petition under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the United States Bankruptcy Court for the

¹ Applicant has filed a separate application for international section 214 authorization in connection with the same proposed transaction.

District of Delaware ("Bankruptcy Court"). In its Chapter 11 Filing, Mpower Holding submitted a plan of reorganization, under which it proposes to exchange newly issued shares of common stock for certain outstanding senior notes and all outstanding preferred stock issued by Mpower Holding.

Upon consummation of the transaction, Mr. Lang Gerhard will indirectly own a 20% interest in Mpower Holding, and thus in Applicant, through an intermediate California corporation, West Highland Capital, Inc. ("West Highland"). Mr. Gerhard owns 100% of West Highland, which will own 20% of Mpower Holding pursuant to the proposed transaction. No other new shareholder will hold a 10% or greater ownership interest in Applicant.

As a result of the proposed transaction, the new shareholders will receive approximately 98.5% of the issued common stock of reorganized Mpower Holding. The Mpower Holding common stock existing prior to the proposed transaction will be subject to a reverse stock split and will dilute to approximately 1.5% of the issued common stock of reorganized Mpower Holding. After the proposed transaction, Applicant will continue to be wholly owned by Mpower Holding and will continue to provide the telecommunications services it currently provides.

Applicant asserts that the proposed transaction will allow Applicant to enhance its competitive position by providing Mpower Holding with greater flexibility in obtaining financing, which will yield benefits for Applicant and allow Applicant to continue operations into 2003 and beyond. During 2001, Applicant determined that cash flow from operations would be insufficient to both service its long-term debt and to operate its business in the long term. Consequently, Applicant began an operational restructuring to focus on 27 core metropolitan areas in 8 states. Although this restructuring has significantly reduced Applicant's cash burn rate, Applicant determined that additional financing would be necessary to meet its debt service requirements and to fund operations beyond the end of the first quarter of 2003.

Mpower states that the proposed transaction is not detrimental to the public interest because it does not involve any change in the management or officers of Applicant; does not in any way modify Applicant's operations or change the telecommunications services to be provided Applicant's customers since Applicant will continue to operate pursuant to its existing certificates and tariffs; and will not result in a decrease in currently available services or an increase in rates charged to customers. Mpower further states that the Commission's grant of this Application is consistent with the public interest in promoting competition among telecommunications carriers. Finally, Mpower requests expedited approval of this application in order to comply with the final order of the Bankruptcy Court as expeditiously as possible when issued.

GENERAL INFORMATION

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file petitions to deny on or before **May 15, 2002.**² Final action will not be taken on the application earlier than 15 days following the date of this Public Notice.

All filings concerning any or all matters in this Public Notice should refer to **WC Docket No. 02-88**. Due to the threat of contamination that resulted in the disruption of regular mail, the Commission released on November 29, 2001, an Order³ temporarily amending certain procedural rules on an emergency basis. Pleadings must be filed electronically (*i.e.*, by e-mail or facsimile), by overnight delivery service, or by hand delivery to the Commission's Massachusetts Avenue location.⁴

- **If filed electronically** by e-mail, pleadings shall be filed at the following e-mail address: CCBSecretary@fcc.gov. Please also copy all those listed below. For security purposes, it is recommended that documents filed via electronic mail be converted to PDF format.
- **If filed by facsimile**, pleadings shall be faxed to (202) 418-0187. The fax transmission should include a cover sheet listing contact name, phone number, and an e-mail address (if available).
- **If filed by hand delivery**, documents shall be delivered to the Commission's contractor, Vistronix, at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. All hand deliveries must be held together with rubber bands or fasteners, and any envelopes must be disposed of before entering the building.
- **If filed by overnight delivery service** other than U.S. Postal Service (USPS) Express Mail and Priority Mail, filings must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, S.W., Washington, D.C. 20554.

² See 47 C.F.R. § 63.52.

³ See *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, FCC 01-345 (rel. Nov. 29, 2001).

⁴ See *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, DA 01-2919 (rel. Dec. 14, 2001).

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and
- (3) Bill Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (4) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; e-mail: ielis@fcc.gov.
- (5) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@fcc.gov.

Copies of the application and any subsequently filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's Electronic Comment Filing System (ECFS), which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

In addition to filing paper comments, parties may also file comments using the ECFS.⁵ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

For further information, please contact Tracey Wilson, at (202) 418-1394 or Bill Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

⁵ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).